

**Notice of Non-Compliant
Amendment (37 CFR 1.121)**

Application No.

10/529,479

Examiner

Daniel M. Sullivan

Applicant(s)

BRUNNER ET AL.

Art Unit

1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on _____ is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:

- ☒ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
 - ☐ B. New paragraph(s) should not be underlined.
 - ☒ C. Other See Continuation Sheet.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
 - ☐ B. Other _____.
- ☐ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
 - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
 - ☐ C. Other _____.
- ☐ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
 - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
 - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
 - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
 - ☐ E. Other: _____.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month**, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction, if the non-compliant amendment is one of the following: a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a *Quayle* action. If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

Extensions of time are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

Failure to timely respond to this notice will result in:

Abandonment of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

Non-entry of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Legal Instruments Examiner (LIE), if applicable

Telephone No.

Continuation of 1(c) Other: The markings to show changes made to the specification are not consistent with the changes actually made. Specifically, the markings appear to be based on the preliminary amendment filed 15 August 2005, which has not been entered in the instant application.

Based on the exhibits submitted with the 28 November 2007 Paper, the history of the instant application is believed to be as follows:

This application, 10/529,479, was filed as a national stage application of PCT/DK03/00634 on 28 March 2005 with a preliminary amendment amending the specification and claims. On 28 July 2005, Applicant filed a petition requesting removal of the 28 March preliminary amendment from the instant application and the creation of a separate application under 35 USC 111(a) that includes the preliminary amendment. The petition was granted and a new application 10/470,658 was created under 35 USC 111(a), which included the 28 March preliminary amendment. The preliminary amendment was removed from the instant application and the application was processed under 35 USC 371.

A second preliminary amendment was filed with the petition to remove the 28 March preliminary amendment from the instant application, which included amendments to the specification paragraphs and claims as filed in the 28 March preliminary amendment. As the second preliminary amendment was based on the changes made in the first preliminary amendment, the second preliminary amendment was entered into the 10/470,658 application and was not entered into the instant application. Consequently, the changes indicated in the amendment filed 28 November 2007 are presented as amendments to a paragraph that is not present in the instant application. Therefore, the amendment is improper.

It is noted that the information in the paragraph Applicant seeks to amend is already of record in the instant application in an Application Data Sheet that was filed with the original application. Therefore, the paragraph is unnecessary. It is noted that the exhibits submitted in the 28 November 2007 Paper, including the petition and decision, will remain of record in the instant application, as the petition decision states that the petition and decision will be included in both the instant application and the 10/470,658 application. (See the fourth paragraph on page 3 of the petition decision.) As it appears that the record in the instant case is now complete, it is noted that if, as Applicant states in the 28 November Remarks, the instant application will be allowed to go abandoned, it is not necessary to reply to this Office letter and the application will be abandoned after the period for reply expires.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel M. Sullivan whose telephone number is 571-272-0779. The examiner can normally be reached on Monday through Friday 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Woitach, Ph.D. can be reached on 571-272-0739. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Daniel M Sullivan/
Primary Examiner, Art Unit 1636